of goods. This is what the learned author has to say in the matter:—

"A distinction must be drawn between a case where a post-dated cheque is given to discharge an existing liability and a case where it is issued against delivery of goods, property or cash with an assurance that it will be met on being presented to the bank on the due date and in due course. In the first case the failure to provide the balance is merely a breach of promise, whereas in the latter it may have different consequences. Intention of the drawer at the time the cheque is issued is a material test and if it appears from the circumstances of the drawer that he did not expect that the cheque would be cashed in normal course it would be *prima facie* proof of the intention to cheat."

Apparently, the learned president was not aware of this distinction and therefore he failed to distinguished the case of *Khoo Kay Jin, supra,* from the present case. In the first instance, in *Khoo Kay Jin's* case, *supra,* the post-dated cheque was issued some three days after delivery of the goods and it was therefore issued in order to discharge an existing liability whereas in the present case the first post-dated cheque P.2, at any rate, was issued and handed over to P.W. 3 immediately against delivery of the rice and further when P.4 was issued a little bit later the respondent gave an assurance that both P.2 and P.4 would be met on being presented to the bank on the due dates and in due course.

Again at page 1158 of The Law of Crimes by *Ratanlal and Dhirajlal,* 21st edition, the learned authors in their commentary under paragraph "Delivery of goods" state as follows:—

"Where the charge against the accused was in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But, if on the other hand, he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods, then a case of cheating would be established."

It has been so held in *Mahadeo Prasad.*[2] And in *Shantilal v. State*[3] it was held that the intention had to be gathered from the facts on record and if from them it is established that the failure to meet the cheque was not accidental but was a consequence expected by the accused, the presumption would be that the accused intended to cheat.

In order to ascertain the intention of the respondent at the time when he issued the post-dated cheques P.2 and P.4, it will be necessary to examine the surrounding circumstances. First of all when the respondent placed the order for the rice he promised to make the payment in cash but instead issued two post-dated cheques as payment against delivery. The promise to pay in cash was obviously to induce P.W. 7 to deliver the rice because he must have known if he did not make this promise P.W. 7 would not have agreed to deliver the rice to him as they were strangers and as they had no dealings with one another previously.

Next, according to the evidence of P.W. 1, the manager of Bank Bumiputera, Ipoh, the respondent opened an account in the name of Chop Chew Eng Hin (Teck Kee) with the bank on 26th July, 1967 with a cash deposit of $500 and on the same day made a withdrawal of $400. Between that date and 16th August, 1967 when this account was closed the respondent made two further deposits and two further withdrawals. During this period but after the two said deposits and the two said withdrawals the respondent issued 11 other cheques of various amounts but they were returned with the words "Refer to drawer" stamped on them because there was no money in the respondent's account to meet any of those cheques. Both P.2 and P.4 are included in those 11 post-dated cheques. From these circumstances it is obvious that when the respondent issued P.2 and P.4 he did not expect that they would be cashed in the normal course. In my view this is further strengthened by the evidence of P.W. 9, the shop assistant employed by Chop Chew Eng Hin (Teck Kee), who said that nearly all the goods in the shop had been removed through the back door a few days before P.2 and P.4 were due to be presented to the bank.

In view of these circumstances, I find that the learned president was wrong in coming to the conclusion that the prosecution had failed to prove a *prima facie* case. The appeal is therefore allowed.

Since the learned president who heard this case is no longer available to continue with the hearing of this case, I therefore order a re-trial before another president.

Appeal allowed. Re-trial ordered.

SEAH CHENG HOCK v. LAU BIAU CHIN

[O.C.J. (Winslow J.) July 16, 1969]

[Singapore — Divorce No. 75 of 1967]

Divorce — Constructive desertion — Ground that respondent has lived separately from petitioner for a period of not less than 7 years — Proof of constructive desertion — Meaning of "living separately".

The petitioner in this case petitioned for divorce on the grounds: (1) the respondent had deserted him for a period of at least 3 years immediately preceding the presentation of the petition, and (2) the respondent had lived separately from him for a period of at least

7 years immediately preceding the presentation of the petition and was unlikely to be reconciled with him. On the facts it was held that although the parties were physically separated during the period 1958 to 1962 (as the petitioner was away for most of that period on his medical studies in Dublin), the parties were not living separately, as there was no intention on the part of either to bring their cohabitation or consortium to an end.

Held, dismissing the petition: (1) the petitioner had not discharged the burden of proof of constructive desertion by the respondent;

(2) the parties in this case did not commence to live separately at any time before July 26. 1962, and therefore they had not lived separately for a period of 7 years immediately preceeding the date of the petition.

Cases referred to:—

(1) *Buchler* v. *Buchler* [1947] P. 25, 29.

(2) *M.* v. *M.* [1967] N.Z.L.R. 931.

(3) *Sullivan* v. *Sullivan* [1958] N.Z.L.R. 912.

(4) *Fraser* v. *Fraser* [1967] N.Z.L.R. 856.

DIVORCE.

N.N. Leicester for the petitioner.

J. Chellam for the respondent.

Cur. Adv. Vult.

Winslow J.: The petitioner founds his petition for divorce on two grounds, viz.:—

(i) that the respondent has deserted the petitioner without cause as from 28th July, 1962 for a period of at least 3 years immediately preceding the presentation of the petition on 8th June, 1967; and

(ii) that the respondent has lived separately from the petitioner for a period of not less than 7 years immediately preceding the presentation of the petition and is unlikely to be reconciled with him. It is contended that she has lived separately from the petitioner as from October 1958.

It is not disputed that on 18th April, 1966 the petitioner presented an earlier petition for divorce against the respondent in Divorce No. 29 of 1966 on the ground of constructive desertion as from 28th July 1962, to which the respondent delivered an answer denying such desertion and that on 9th March, 1967 the respondent presented a petition for divorce against the petitioner in Divorce No. 30 of 1967 on the following grounds:—

1. Cruelty
2. Desertion as from 28th July, 1962 and
3. Adultery

to which the petitioner made no answer.

It is also undisputed that on 3rd April, 1967 both petitions were dismissed since neither petitioner wished to proceed with his or her petition.

The petitioner himself gave evidence and called one witness, Ewan Yap (P.W.2). The respondent also gave evidence.

After considering the evidence carefully, I have made the following findings on the facts:-

(a) The parties first met in or around 1954 in Singapore and later renewed their friendship in London towards the latter part of 1955 soon after which they became engaged. He was then a qualified health inspector with ambitions of becoming a doctor but was unable to find a medical school which would accept him at that time. He accordingly took a diploma course in public health. She, on the other hand, had gone to England a little earlier to continue her music lessons with Mr. Fryer, a concert pianist and a professor of music.

(b) In early 1956 she returned to Singapore on the s.s. Chusan with her sister in order to await his return to Singapore to get married. However, before the Chusan reached Singapore, he commenced bombarding her with telegrams to the ship begging her to fly back to London to marry him as he could not live without her. She accordingly obliged by taking the same boat back on its return voyage and they eventually got married in London in December 1956 because although she was older she felt he needed her in his emotional and depressed state as a student.

(c) In May 1957 it was agreed between the parties that she should return to Singapore because she had become pregnant. Financial considerations also seemed to make that course desirable as well as the fact that in Singapore she could live with her parents and obtain the kind of diet she needed.

(d) In August 1957 the petitioner himself returned to Singapore but, after a short spell together in a flat and then in his parents' home, she left for her own parents' home at 7B Eng Watt Street.

(e) On 3rd December, 1957 their child Lynette was born at Kandang Kerbau Maternity Hospital after which the respondent agreed to go back and live with the petitioner and their child at his parents' home. It was at about this time also that she provided him with the caution money necessary to ensure a place for him in Dublin in connection with his medical studies.

(f) In March 1958 they left the home of his parents and went to live with her parents until October 1958 when she saw him off at the airport on his departure for Dublin to further his medical studies. They parted on amicable terms and neither had the slightest intention then of bringing cohabitation to an end despite their physical separation.

(g) It will be seen from my findings of fact relating to the history of the relationship between the parties from the time they first met until October 1958, when he departed from Singapore for Dublin, that I have not accepted the petitioner's version with regard to three matters, viz.:—

(i) that the respondent's reason for leaving England in early 1956 was because the engagement had been broken off;

(ii) that in May 1957 the respondent returned to Singapore from London on her own because of misunderstandings and differences between them and not by virtue of mutual agreement; and

(iii) that their married life had deteriorated to such an extent by October 1958 that when, as he said, he left for Dublin to study medicine, that was not the sole reason for his leaving her and that he would have left her in any case.

(h) Whereas he said that they were man and wife in name only and that it was the daughter who held them together and whereas he spoke of frequent quarrels between them, that she nagged him and humiliated him and that she was domineering, being 5 years older than himself, and that they had no friends in common, the respondent, on the other hand, did not strike me as being the type of shrewish termagant that the petitioner tried to make her out to be.

(i) She denied that she was domineering and claimed that she was tolerant and understanding, being an older woman, and that she felt that he needed her. At the beginning she had tried to discourage him from marrying her but he threatened suicide if she would not agree. Her evidence on these matters bears the indicia of sincerity and devotion to his interests. This is borne out, as will be seen later, by her evidence which I accept that, until July 1962, she regularly remitted money, *inter alia*, from her own earnings as a piano teacher to help him whilst he was pursuing his studies in Dublin. The petitioner tried to minimise her contributions in this respect and attempted to give the impression that he could have managed without them and only accepted them because they were practically forced on him.

(j) I must now deal with his contention that, when he left in October 1958, he left her for good and that he had no intention of ever resuming cohabitation. It is significant that when asked whether he had written loving letters to her, he at first denied writing any more than ordinary civil letters but when taxed with three letters written by him (Exhibit D2) which he wrote during the period 1958 to 1962, he quickly, even without looking at these letters, admitted having written affectionately and he explained that his reason for writing such affectionate letters was to promote the interests of the child. When taxed further he admitted that he wrote these letters in the hope that, after qualifying as a doctor, they could both be reconciled and the marriage turned into a success.

(k) It follows from this analysis of the evidence that I am satisfied that, when he left for Dublin to pursue his medical studies, he had far from intended to bring consortium or cohabitation with her to an end. This conclusion is fortified by a letter (Exhibit D7) which he wrote in July 1960 informing her that he could not wait for the day when they could let their daughter have a baby brother or sister to keep her company. One has only to read these letters, Exhibits D2 and D7, to realise that, no matter what he may say now, he did not have the slightest intention of bringing the marriage to an end. These are not the only letters he wrote. She said that she still has a tinful of such letters written during the same period and I have no reason to doubt this.

(l) I now turn to the events which took place in July 1962 when the petitioner returned to Singapore and spent 17 days from July 11th to July 28th with the respondent and her parents at 7B Eng Watt Street. I might as well state, here and now, that I prefer the respondent's version of what took place between the parties during this period to the petitioner's.

(m) Whereas the petitioner denied resuming marital relations, she said that, although the petitioner was somewhat cold and aloof, he did have such relations with her on 3 or 4 occasions. She tried her utmost to save the marriage but the petitioner was adamant about having some kind of separation and asked her to accompany him to see his solicitors, which she naturally refused, as she had no intention of giving him up.

(n) She denied having a big quarrel with him on the night of 27th July, 1962. She said that she asked him that evening before he went out with his own friends why he had come thousands of miles to humiliate and neglect her and their child and that, because she was a little provoked as he had been keeping late nights over the past week, she told him "You might as well go back to Dublin to-morrow". According to her, he promised to come back earlier that night. But he did not actually come back till 2 a.m. on the morning of the 28th, smelling of drink. The following day he packed up and left, despite her entreaties not to do so in which the daughter joined.

(o) Although she rang him up on the night of the 28th at his parents' home to come back he refused point blank and, a few days later, she received a letter from his solicitors dated 31st July, 1962 in which she was told that all future correspondence from her should be addressed not to the petitioner but to the solicitors concerned. This was the reason why, although she sent him Christmas cards, etc. after 1962, there was no further contact between them whilst he was away for the purpose of completing his studies until his return in 1966, after having qualified as a medical practitioner, when she received a letter from his solicitors (Exhibit D6) stating that they had instructions to commence divorce proceedings against her on the ground of her desertion and asking for the name of solicitors who would accept service on her behalf.

(p) It should be noted that, in the maintenance proceedings which she instituted in August 1962, the petitioner informed the magistrate that when she met him at the airport on 11th July, 1962, she had tears in her eyes and that she let him kiss her on the cheek, that he had missed his wife quite a lot and wished to make up for loss of time and had made love to her in July 1962 after his return. Before me he denied these. He admitted that what he told the magistrate was not true and that the sole reason for this was because he was afraid of publicity.

(q) I am satisfied from all the evidence that she did not expel him or drive him out into the streets, from whatever matrimonial home they could be said to have had, on 28th July, 1962. The tragedy of the whole situation is that they really never had an established matrimonial home as such, particularly at a time when the husband was dividing his time between Europe and Singapore in the course of his studies. It seems to me that he had no matrimonial home to speak of on 11th July, 1962 because he was then only a bird of passage and spent whatever time he did in Singapore, as a student on a visit here during vacation time, with his wife and child, either in the home of his relatives or hers until 28th July, 1962. I find that her conduct in telling him on 27th July, 1962 that he could return to Dublin "tomorrow" did not amount to constructive desertion on her part. I find that he took advantage of what she said in a moment of distress and anger to promote his own fickle interests without any thought or care for the matrimonial obligations he owed to her, particularly at a time when he must have been only too well aware of the gratitude, at least, which he undoubtedly owed her for the love, devotion and sacrifice she had herself made on his behalf.

(r) The magistrate who heard the maintenance application in the 6th magistrate's court in maintenance Summons No. 531 of 1962 (Exhibit D4) made a nominal order of maintenance at $10 p.m. for the respondent and $10 p.m. for the child. The magistrate further found that the petitioner had deserted her. The maintenance order still stands except for a variation by consent in 1966 increasing the amount to $125 p.m. each and there is nothing before me to indicate that any appeal against such order has succeeded, although from Exhibit D4, it would appear that a notice of appeal was, in fact, filed on 17th August, 1962.

(s) A witness, Ewan Yap (P.W.2), was called to give evidence, belatedly, on behalf of the petitioner as to a matter which the petitioner had not raised himself and on which he therefore could not have been cross-examined. This witness said that he telephoned the respondent in 1967 asking her what she proposed to do about the proceedings for divorce instituted by the petitioner and that the respondent had asked for $50,000 to "let him off the hook". The respondent denied this in her evidence and said that a telephone conversation did take place not in 1967 but in 1966, soon after the petitioner had instituted proceedings, between her and P.W.2 who had rung her up with an offer of money by the petitioner to "buy her off". She was annoyed about this and considered it a most improper joke on his part. Here again too I prefer the respondent's version to that of P.W.2 which adds not one iota of strength to the petitioner's case. On the contrary he was evasive if not unconvincing about his motive for making a telephone call to her at all.

So much for the facts. I now turn to the two grounds on which the petitioner now asks for a divorce. It seems to me quite clear that the petitioner has not discharged the burden of proof of constructive desertion on her part. I have already found that he wanted a separation from her soon after his return from Dublin in July 1962 and that when, in her state of shock and distress, she told him, in the heat of the moment, that he could go back to Dublin, he acted with inordinate haste in packing up and leaving and instructing his solicitors to tell her not to correspond with him but with his solicitors. He thus effectively shut all doors to reconciliation in her face despite her desire to save the marriage especially when he told her, through solicitors not to contact him. I can think of no possible desertion on her part when it is transparent that he himself obviously desired a separation all long.

The law on this is succinctly stated by Lord Greene M.R. in *Buchler v. Buchler*[1] as follows:—

"It is as necessary in cases of constructive desertion as it is in cases of actual desertion to prove both the factum and the animus on the part of the spouse charged with the offence of desertion. The practical difference between the two cases lies in the difference in the circumstances which will constitute such proof. In actual desertion the spouse charged must be shown to have abandoned the matrimonial consortium in fact, and to have done so with the intention of deserting. In constructive desertion the spouse charged must be shown to have been guilty of conduct equivalent to 'driving the other spouse away' (*per* Bucknill J. in *Boyd* v. *Boyd*) from the matrimonial home and to have done so with the intention of bringing the matrimonial consortium to an end. In each case the intention may, of course, be inferred if the circumstances are such as to justify the inference. In the case of actual desertion the mere act of one spouse in leaving the matrimonial home will in general make the inference an easy one. In the case of constructive desertion where there is no such significant act as a departure by the spouse who is alleged to be in desertion, the acts alleged to be equivalent to an expulsion of the complaining spouse must be of such gravity and so clearly established that they can fairly be so described. If they do not satisfy this test, not only is expulsion in fact not proved but it is not legitimate to infer an intention to desert. A man may wish that his wife will leave him: but such a wish, unless accompanied by conduct which the court can properly regard as equivalent to expulsion in fact, can have no effect whatever. Conversely, where the conduct of the required nature is established, the necessary intention is readily inferred since no one can be heard to say that he did not intend the natural and probable consequences of his acts: (*Sickert* v. *Sickert*). The crucial matter for consideration therefore is the nature of the conduct relied upon as equivalent to an expulsion of the complaining spouse."

The first ground, in my judgment, accordingly fails.

Finding as I do that there was no constructive desertion on her part on 28th July, 1962, I need not consider the second ground relating to her living separately for not less than 7 years before the presentation of the petition on 8th June, 1967 and being unlikely to be reconciled with him because even if I were to hold that an intention to abandon cohabitation occurred on his part on that date, a period of not less than 7 years would not have intervened by 8th June, 1967 when the petition was presented. There are other considerations which may arise such as the fact that he was bound to return to Dublin by October 1962 for the purposes of his studies there and it may well be that until his return to Singapore in 1966, they had not been living separately within the meaning of the expression as expounded by the various New Zealand authorities which were cited to me.

I have already found that the period from 1958 to 1962 cannot from any point of view be regarded as a period during which the parties were living separately. They may have been physically living apart but the evidence clearly shows that there was no intention on the part of either to bring such cohabitation or consortium to a permanent end, during the period 1958 to 1962, particularly when they were separated by the seven seas, not because they wished to end consortium or cohabitation but because there was no other alternative to their physical separation during that period because of his studies.

In 1967 T.A. Gresson J. in *M. v. M.*[2] reviewed the authorities on the meaning of "living apart" including differing expositions by members of the Court of Appeal in New Zealand in *Sullivan v. Sullivan*[3] and I do not think I can do better than to quote what Gresson J. said as follows:—

"In *Sullivan* v. *Sullivan* the equivalent of s.21 (1) (o) of the Matrimonial Proceedings Act 1963, was exhaustively considered by the Court of Appeal. Finlay J. observed: 'The expression "living apart" was perhaps too general and imprecise . . . . What the Legislature intended to convey by the expression "living apart" was a state of affairs merely as such. The existence of a state of affairs which is the antithesis of living together; in other words, a state of affairs in which the parties are living separate and apart from each other, a state in which there is an absence of that consortium which is the essential characteristic of the proper relationship of husband and wife.'

Hutchison J. expressed the opinion that 'living apart' involves both a physical separation and a mental attitude on the part of one or both of the spouses. My brother Turner considered that 'living apart' involves two essential ingredients — a physical separation and a mental attitude averse to cohabitation on the part of one or both of the spouses, and he agreed that something more than mere physical separation is involved in the phrase. The words in the section appeared to him to be the antonym of 'cohabitation', and he was of the opinion that 'cohabitation' and 'living apart' are mutually exclusive opposites, covering between them all possible relationships of the class between husband and wife. If spouses are 'cohabiting', they are not 'living apart', and if they are 'living apart', they are not 'cohabiting'. There can, moreover, be no possible intermediate stage.

McCarthy J. was of opinion that the state of mind of the parties, like any other matter of fact, was material, but that it should not be elevated to the importance which it has assumed in the law relating to desertion, and his preference was to adopt an objective test, having regard to all the surrounding circumstances."

To summarise, "living separately" undoubtedly involves both a physical separation and a mental attitude on the part of one or both spouses, and the court must have regard to all the surrounding circumstances, including the conduct of the parties and, where necessary, the purposes for which physical separation took place, before it can come to a definite conclusion as to the exact date on which they commenced to live separately.

So far as this petition is concerned, all that seems necessary for me to determine is that they did not commence to live separately as from October 1958 as contended for by the petitioner nor at any time before 28th July, 1962. I have indicated the difficulties which may arise with regard to deciding the exact

date on which such separation actually commenced but that does not require determination by me.

On this petition, I do not have to discuss *Fraser v. Fraser*[4] on limping marriages or marriages which have irretrievably failed in view of my finding of fact in this case because this marriage can only be said to have commenced limping on some date yet to be decided on or after 28th July, 1962 and a petition can only succeed on a petition presented not less than 7 years after such date. The petition is accordingly dismissed with costs.

Petition dismissed.

Solicitors: *Leicester & Chen; Boswell, Hsieh & Lim.*

OLI MOHAMED v. KEITH MURPHY & ANOR

[O.C.J. (Choor Singh J.) July 18, 1969]

[Singapore — Suit No. 181 of 1968]

Negligence — Collision on highway — Cross-roads of equal status — Innocent 3rd party — Proof of negligence — Common law — Recovery of damages.

The plaintiff was the owner of No. 196 Bencoolen Street, Singapore. On March 29, 1967 the 1st defendant drove his car and the 2nd defendant drove his taxi so negligently into one another that both vehicles immediately thereafter ran into and collided with and damaged the plaintiff's premises. The 1st defendant did not enter appearance and was absent at the trial. The 2nd defendant was absent but was represented by counsel who did not call any witness. The plaintiff did not call any witness. However it was not in dispute that the collision took place at the intersection of Albert Street and Bencoolen Street and that both vehicles went off the road and hit the plaintiff's premises.

Held: (1) where there is a collision at cross-roads of equal status as in this case, the inference to be drawn in the absence of special circumstances (there was no evidence of special circumstances in this case) is that both drivers have been equally negligent. There was therefore a *prima facie* case of negligence against the second defendant;

(2) as the plaintiff is an innocent third party it is enough for him to prove negligence against the second defendant even if it is not the whole of the negligence. By the common law the plaintiff is entitled to recover the whole of the damages awarded in this case;

(3) the plaintiff was entitled to $2,750 in the form of damages with interest at 6% from July 12, 1967.

Cases referred to:—

(1) *Baker* v. *Market Harborough Industrial Co-operative Society Ltd.* [1953] 1 W.L.R. 1472.

(2) *Bray* v. *Palmer* [1953] 2 All E.R. 1449.

(3) *Dorrington* v. *Griff-Fender (Swansea) Ltd.* [1953] 1 All E.R. 1177.

(4) *France* v. *Parkinson* [1954] 1 All E.R. 739.

(5) *Dingle* v. *Associated Newspapers Ltd.* [1961] 2 Q.B. 162.

(6) *Drinkwater* v. *Kimber* [1932] 2 Q.B. 281.

CIVIL SUIT.

H.E. Cashin for the plaintiff.

Tan Kim Seng for the 2nd defendant.

Choor Singh J.: In this suit the plaintiff claims damages for injury to the plaintiff's premises alleged to have been caused by the negligence of the first defendant and by the negligence of the second defendant or alternatively by the negligence of one or other of them in the driving of their respective motor vehicles.

The facts are these. The plaintiff is the owner of premises known as No. 196 Bencoolen Street, Singapore, hereinafter referred to as "the said premises". On the 29th March 1967 the first defendant drove motor car ST.441 and the second defendant drove motor taxi No. SH.2884 so negligently into one another that both vehicles immediately thereafter ran into and collided with and damaged the said premises.

The first defendant did not enter appearance and was absent at the trial. The second defendant was also absent at the trial but was represented by counsel who did not call any witness. The plaintiff did not call any eye witness of the accident. Counsel for the plaintiff attempted to put in evidence the reports made to the police by the first and second defendants but I ruled that these reports were inadmissible under the Evidence Ordinance as the makers of the reports had not given evidence. It is generally not understood that such a report is admissible for the sole purpose of impeaching the credit of the person who made the report and for no other purpose. Hence if the person who made the report does not give evidence at the trial his report is inadmissible. In the result there was no evidence at all before the court as to the circumstances under which the collision took place.

However, it is not in dispute that motor car No. ST.441 driven by the first defendant was travelling along Albert Street from the direction of Selegie Road and proceeding towards Queen Street; that taxi No. SH.2884 driven by the second defendant was travelling along Bencoolen Street from the direction of Jalan Besar and proceeding towards Bras Basah Road; that the collision between the two vehicles took place at the intersection of Albert Street and Bencoolen Street; and that after the collision both vehicles went off the road and hit the said premises which are on the left side of Bencoolen Street as one faces Bras Basah Road.

Counsel for the second defendant submitted that the burden of proof was on the plaintiff and as he had called no evidence to show how